

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071

Filed: 8/20/2002
49th Day: 10/8/2002
180th Day: N/A
Staff: CP-LB
Staff Report: 1/17/2003
Hearing Date: February 7, 2003
Commission Action:

**Fr13a****STAFF REPORT: APPEAL - NO SUBSTANTIAL ISSUE**

LOCAL GOVERNMENT: City of Los Angeles

LOCAL DECISION: Denied

APPEAL NUMBER: A-5-PPL-02-282

APPLICANT: Ronald Swepton
APPELLANT: Ronald Swepton

AGENT: Pamela S. Schmidt of Jeffer, Mangels, Butler & Mamaro LLP

PROJECT LOCATION: 649 N. Resolano Drive (Portion Lot 9, Block 1, Tract 10175), Pacific Palisades, City of Los Angeles, Los Angeles County.

PROJECT DESCRIPTION: Appeal of City of Los Angeles denial of Local Coastal Development Permit Application No. ZA-2001-5337 for construction of a three-level, 4,700 square foot single family residence on a vacant 9,150 square foot hillside lot (RE15-1-H Zone). An unquantified amount of grading would be necessary to carry out the proposed development.

SUMMARY OF STAFF RECOMMENDATION

The staff recommends that the Commission, after public hearing, determine that the appeal raises **no substantial issue**. The local government's denial of the local coastal development permit for the proposed development raises no substantial issue with regards to the Chapter 3 policies of the Coastal Act. The local government's denial of the coastal development permit is correctly based on its adopted findings which state that the proposed development would negatively affect public views, create hazardous traffic and pedestrian situations, and could not be found to conform with Chapter 3 of the Coastal Act. The City also did not certify Mitigated Negative Declaration (ENV-2001-5338-MND) for CEQA compliance and found that the proposed project would not conform to the requirements of the City's hillside ordinance. **The motion to carry out the staff recommendation is on Page Four.**

The applicant/appellant disagrees with the staff recommendation, claiming that the City misused its authority and improperly used the Coastal Act as an excuse to deny the proposed project because the neighbors strong objections. The applicant/appellant requests that the Commission overturn the City's denial of the local coastal development permit.

SUBSTANTIVE FILE DOCUMENTS:

1. City of Los Angeles Local Coastal Development Permit Application No. ZA-2001-5337.
2. Geologic and Soils Engineering Exploration Report, by Grover, Hollingsworth and Associates, Inc, November 2, 2001 (GH10169-G).

I. APPELLANT'S CONTENTIONS

The applicant, Ronald Swebston, has appealed the City of Los Angeles denial of Local Coastal Development Permit No. ZA-2001-5337 for a proposed single family residence on a vacant hillside lot situated in the Pacific Palisades area (See Exhibits). The applicant's grounds for the appeal are that the proposed project is consistent with the Coastal Act, but the City misused its authority and improperly used the Coastal Act as an excuse to deny the proposed project because the neighbors strong objections (Exhibit #4, p.3). The applicant/appellant requests that the Commission overturn the City's denial of the local coastal development permit.

II. LOCAL GOVERNMENT ACTION

- | | |
|-----------|---|
| 2/14/2002 | The City of LA Planning Dept., Zoning Administrator holds a public hearing for Local Coastal Development Permit Application No. ZA-2001-5337. |
| 4/19/2002 | The City of LA Planning Dept., Zoning Administrator issues letter approving with conditions Local Coastal Development Permit Application No. ZA-2001-5337. |
| 5/2/2002 | Applicant Ronald Swebston appeals the Zoning Administrator's conditional approval of Local Coastal Development Permit Application No. ZA-2001-5337. |
| 5/3/2002 | Miramar Homeowners' Assoc., represented by Audrey Ann Boyle, appeals the Zoning Administrator's conditional approval of Local Coastal Development Permit Application No. ZA-2001-5337. |
| 5/3/2002 | Neighbors Marc & Louise Schmuger, represented by Irell & Manella LLP (Alan J. Abshez, Esq) appeal the Zoning Administrator's conditional approval of Local Coastal Development Permit Application No. ZA-2001-5337. |
| 6/19/2002 | The West Los Angeles Area Planning Commission holds a public hearing for the appeals of Local Coastal Development Permit Application No. ZA-2001-5337. |
| 7/16/2002 | The West Los Angeles Area Planning Commission issues its determination to: a) DENY the appeal by applicant; b) GRANT the appeals by the opponents; c) OVERTURN the action of the Zoning Administrator approving Local Coastal Development Permit Application No. ZA-2001-5337; d) DENY Local Coastal Development Permit Application No. ZA-2001-5337; e) MODIFY the Zoning Administrator's findings; and f) NOT ADOPT Mitigated Negative Declaration (ENV-2001-5338-MND) for the proposed development (See Exhibit #5). |

- 7/25/2002 The Commission's South Coast District office receives the City's Notice of Final Action for the City's denial of Local Coastal Development Permit Application No. ZA-2001-5337, and establishes the 20-working day appeal period, which ends on August 22, 2002.
- 8/20/2002 The Commission's South Coast District office receives the appeal by Applicant Ronald Swepston (A5-PPL-02-282) appealing the City's denial of Local Coastal Development Permit Application No. ZA-2001-5337 (See Exhibit #4).
- 8/20/2002 The Commission's South Coast District office notifies City of the appeal, and requests copies of the City's file (all relevant docs).
- 9/9/2002 The Commission opens and continues the public hearing on Appeal A5-PPL-02-282. The Commission cannot act on the appeal because City has not yet sent its file to South Coast District office.
- 12/10/2002 The Commission's South Coast District office sends the City a second notice of the appeal, and again requests copies of the City's file (all relevant docs).
- 12/20/2002 The Commission's South Coast District office receives a copy of the City's file.
- 1/17/2003 The Commission's South Coast District office issues the staff report for the Commission's scheduled February 7, 2003 public hearing for Appeal No. A5-PPL-02-282.

III. APPEAL PROCEDURES

Section 30600(b) of the Coastal Act provides that prior to certification of its Local Coastal Program (LCP), a local jurisdiction may, with respect to development within its area of jurisdiction in the coastal zone and consistent with the provisions of Sections 30604, 30620 and 30620.5, establish procedures for the filing, processing, review, modification, approval or denial of a coastal development permit. Pursuant to this provision, the City of Los Angeles developed a permit program in 1978 to exercise its option to issue local coastal development permits.

Sections 13302-13319 of Title 14 of the California Code of Regulations provide procedures for issuance and appeals of locally issued coastal development permits. Section 30602 of the Coastal Act allows *any* action by local government on a coastal development permit application evaluated under Section 30600(b) to be appealed to the Commission. The standard of review for such an appeal is the Chapter 3 policies of the Coastal Act.

After a final local action on a local coastal development permit, the Coastal Commission must be noticed within five days of the decision. After receipt of such a notice which contains all the required information, a twenty working-day appeal period begins during which any person, including the applicant, the Executive Director, or any two members of the Commission, may appeal the local decision to the Coastal Commission (Coastal Act Section 30602).

The appeal and local action are then analyzed to determine if a substantial issue exists as to the conformity of the project to Chapter 3 of the Coastal Act [Section 30625(b)(1)]. If the Commission finds that the appeal raises a substantial issue, the Commission then holds a public hearing in which it reviews the coastal development permit as a de novo matter.

At this point, the Commission may decide that the appellants' contentions raise no substantial issue of conformity with the Coastal Act, in which case the action of the local government stands. Or, the Commission may find that a substantial issue exists with respect to the conformity of the action of the local government with the Coastal Act if it finds that the appeal raises a significant question regarding consistency with the Chapter 3 policies of the Coastal Act. If the Commission finds that a substantial issue exists, then the hearing will be continued as a de novo permit request. Section 13321 of the Coastal Commission regulations specifies that de novo actions will be heard according to the procedures outlined in Section 13114.

IV. DUAL PERMIT JURISDICTION

Within the areas specified in Section 30601, which is known in the City of Los Angeles permit program as the *Dual Permit Jurisdiction* area, the Coastal Act requires that the development which receives a local coastal development permit also obtain a "dual" coastal development permit from the Coastal Commission. For projects located inland of the areas identified in Section 30601 (*Single Permit Jurisdiction*), the City of Los Angeles local coastal development permit is the only coastal development permit required.

The proposed development is not located within the *Dual Permit Jurisdiction*.

V. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

The staff recommends that the Commission determine that **no substantial issue exists** with respect to whether the appeal conforms with the provisions of Chapter 3 of the Coastal Act (commencing with Section 30200), pursuant to PRC Section 30625(b)(1).

Staff recommends a **YES** vote on the following motion:

MOTION:

*"I move that the Commission determine that Appeal No. A-5-PPL-02-282 raises **NO** substantial issue with respect to the grounds on which the appeal has been filed."*

A majority of the Commissioners present is required to pass the motion.

Resolution to Find No Substantial Issue for Appeal A-5-PPL-02-282

The Commission hereby finds that Appeal No. A-5-PPL-02-282 presents no substantial issue with respect to conformity with the Chapter 3 policies of the Coastal Act.

VI. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Project Description

The applicant proposes to construct a three-level, 4,700 square foot single family residence on a vacant 9,150 square foot hillside lot (Exhibit #6). An unquantified amount of grading would be necessary to carry out the proposed development. The site is the southern part of Lot 9, a lot that is bisected by Resolano Drive (Exhibit #3). The applicant disputes that the road to the site, Resolano drive, is a public street. He asserted at the local hearings that Resolano Drive has been withdrawn from public use. The City record states that the City Engineering Department allegedly claims that a prescriptive easement exists on the paved 20-foot wide street that has existed since the 1940s (Exhibit #5, p.11). Resolano Drive provides public access to trailhead(s) that go to Topanga State Park (Exhibit #1). The City found that the driveway to the proposed residence would create a hazardous traffic situation for pedestrians and other vehicles using Resolano Drive. In addition, the proposed project was found to have a negative effect on the public's view from Resolano Drive.

B. Factors to be Considered in Substantial Issue Analysis

Section 30625(b)(1) of the Coastal Act states that the Commission shall hear an appeal of a local government action carried out pursuant to Section 30600(b) unless it finds that no substantial issue exists as to conformity with Chapter 3 of the Coastal Act. The term "*substantial issue*" is not defined in the Coastal Act or its implementing regulations. Section 13115(b) of the Commission's regulations simply indicates that the Commission will hear an appeal unless it "finds that the appellant raises no significant questions". In previous decisions on appeals, the Commission has been guided by the following factors.

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and,
5. Whether the appeal raises local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

Staff is recommending that the Commission find that **no substantial issue** exists with respect to whether the appeal conforms with the provisions of Chapter 3 of the Coastal Act for the reasons set forth below.

C. Substantial Issue Analysis

As stated in Section III of this report, the grounds for an appeal of a coastal development permit issued by the local government prior to certification of its Local Coastal Program (LCP) are the Chapter 3 policies of the Coastal Act. Any such local government coastal development permit may be appealed to the Commission. The Commission shall hear an appeal unless it determines that no substantial issue exists as to conformity with Chapter 3 policies of the Coastal Act. In this case, staff has recommended that no substantial issue exists.

The applicant/appellant asserts that the City misused its authority and improperly used the Coastal Act as an excuse to deny the proposed project because the neighbors strong objections. The applicant/appellant requests that the Commission overturn the City's denial of the local coastal development permit.

As stated in the previous section of this report, the Commission's decision will be guided by the following factors.

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and,
5. Whether the appeal raises local issues, or those of regional or statewide significance.

First, the City's record provides a high degree of factual and legal support for its decision that the development is inconsistent with the Coastal Act. The Planning Commission's Determination Report, attached as Exhibit #5, clearly explains that proposed development does not comply with Chapter 3 of the Coastal Act because the proposed development would negatively affect public views (Section 30251) and create hazardous traffic and pedestrian situations (Sections 30253). The affected public view is identified as the view from Resolano Drive, above the project site (Exhibit #5, p.4). Resolano Drive is also where the hazardous traffic situation would be created (Exhibit #5, p.4).

Number two; the local government denied the entire development.

Three, the affected public view and the threat to public safety are significant. The residence could probably be resited or redesigned to avoid or reduce the impacts on public views. A smaller house could decrease the project's impact on the public view. In fact, the City is currently processing a new coastal development permit application that the applicant

submitted after the denial of the application subject to this appeal. It is not clear if the proposed project's impacts on public safety can be mitigated.

Four, the City's denial would not be a negative precedent. No coastal resources would be harmed by the denial.

Finally, the appeal does not raise any local issues, or issues of regional or statewide significance.

Therefore, in conclusion, the Commission finds that the City used proper discretion in denying the local coastal development permit finding that the proposed development does not comply with Chapter 3 of the Coastal Act. Also, the City did not adopt the MND to meet the requirements of CEQA. Therefore, the no substantial issues exists with respect to the Chapter 3 policies of the Coastal Act.

End/cp